

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. VICTOR GALEZA, DEFENDANT AND APPELLANT.

G. R. No. 10692. August 28, 1915

Ponente: TRENT, J.

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TRENT, J.:

This is a case in which the defendant was found guilty of criminal libel for writing two letters to the provincial treasurer of the Province of Sorsogon in which he accused the municipal treasurer of the town of Irocin of official misconduct. The first letter, dated June 16, 1914, reads as follows:

"IROCIN, June 16, 1914.

"The Provincial Treasurer, Sorsogon.

"Sir: In the municipal funds of this pueblo exists a shortage of P1,996 as marked receipts from the year 1908 to 1909, for six quarters, paid by the licensee, Mr. Roman Fortes. The municipal treasurer did not issue his corresponding receipt and kept it for his own use and divided it among other employees so that it would not be discovered.

"The council at that time set down in its annual report for 1910 the sum mentioned, but it is not in the safe. The municipal treasurer has collected from new licensees but has not issued their licenses through waiting for another quarter and various facts that will appear when you investigate.

"The largest sum embezzled is the market fund. "We hope that you will do justice and investigate just as soon as possible and in this way the municipal funds "will not be damaged.

"Respectfully,

(Sgd.) "VICTOR GALEZA."

Upon receipt of this letter, the provincial treasurer sent his deputy to investigate the charges contained therein. The deputy reported that the market, rentals for the last three quarters of the year 1908 and for all of the year 1909 had never been collected, making an outstanding sum due the municipality of P1,886.33. On July 26, 1914, the defendant addressed another letter to the provincial treasurer, reading as follows :,

"IROCIN, SORSOGON, July 26, 1914.

"The Provincial Treasurer, Sorsogon.

"The undersigned hereby appeals to you and represents:

"That on June 16, 1914, impelled by an eager desire that the criminal acts heretofore enshrouded in mystery be discovered and likewise for the purpose of curbing new abuses and preventing new frauds of which the public interests are the victims he forwarded to your office a complaint against Mr. Bonifacio Baeza, municipal treasurer of Irocin, Sorsogon, accusing him of being the perpetrator of or accomplice in the acts set forth in said complaint.

"That on July 13, 1914, by reason of the same complaint, you sent to this municipality a deputy of yours to investigate the truth of the facts denounced; the undersigned in his character of complainant made the subsequent declarations, but, in view of the fact that his averments are not sufficient to convince you, he feels compelled to write this letter for the purpose of corroborating the following facts:

"(a) That in the years 1908 and 1909 Mr. Roman Fortes, a resident of this municipality of Irocin was the licensee of the market of said municipality, but to judge from the receipts he has in his possession he only paid into the municipal treasury an amount corresponding to the first quarter of the year 1908, and if he has done so, this amount does not appear in the public accounts.

"(b) That Mr. Francisco Tobianosa, also a resident of Irocin in the years 1909 and 1910 was the licensee of the slaughter-yard of this said municipality, but the undersigned is convinced that this person failed to pay scrupulously into the treasury the whole amount due in that connection.

"For such reasons and for the sake of public justice he begs you to order the appearance of the said Messrs. Roman Fortes and Francisco Tobianosa so that they may exhibit their corresponding receipts and make sworn statements regarding the facts affecting each of them; with the understanding that if he has failed to pay into the treasury any sum (as the undersigned is convinced), the treasurer, Mr. Baeza, must be regarded as the perpetrator of such frauds or as an accomplice therein.

"Respectfully,

(Sgd.) "VICTOR GALEZA."

It will be noted that in his second letter the defendant modified his charges against the municipal treasurer in accordance with the facts found by the deputy provincial treasurer during the first investigation, but that the defendant still insisted that the municipal treasurer had been guilty of official misconduct. Upon receipt of the second letter the provincial treasurer himself made an investigation, in the course of which the facts found by the deputy were corroborated as well as the allegations made in paragraph (b) of the defendant's second letter.

Although the two investigations showed that these accounts had never been collected, no satisfactory explanation was given at the trial why the said accounts for the years 1908, 1909, and 1910 had remained so long uncollected. It remained for the provincial treasurer, some five years after the accounts had been closed, to arrange for the collection of the market receipts by compelling the debtor to execute a promissory note payable in monthly installments of P40 each. Nor does it appear that even at the date of the trial had any steps been taken to collect the slaughterhouse fees referred to in the defendant's second letter. The defendant, in his first letter, says that the market receipts were included in the town council's report for 1910, presumably as an amount collected; and there was no attempt to controvert this statement. The defendant also asked a clerk in the municipal treasurer's office if that amount was in the municipal treasury and was informed that it was not. If the information received from these sources was correct, which appears to be the case, the conclusion that the municipal treasurer had diverted the money to his own use could hardly be called unjustified. At the very least, the information obtained by the defendant warranted the investigation for which he petitioned the provincial treasurer.

It will be noted that the second letter is couched in language much milder and in conformity with the facts brought out by the deputy's investigation. The additional charges contained in paragraph (b) were fully justified by the subsequent investigation of the provincial treasurer. The lower court found that the charges of fraudulent conduct on the part of the town treasurer were maliciously made. This finding is based upon the supposed insufficiency of the information upon which the defendant acted. But we do not think the trial court has taken into consideration, the difficulty of securing exact information by one who had no authority to examine the books of the town treasurer or to compel persons directly interested in the matter to give him correct information. It is to be doubted if either the town treasurer or the licensees of the market and slaughterhouse would have been communicative

upon such a matter after such a long period of years. If the municipal treasurer actually suffered the town council's annual report for 1910 to show that the amounts in question had been collected, as stated in the defendant's first letter, we cannot say that he did not rightly deserve to be suspected of having diverted the funds to his own use, although it has not been shown that he had actually done so. The provincial treasurer testified that the defendant steadfastly maintained during the second investigation that the whole affair was tainted with fraud, and yet the witness was of the opinion that the defendant made these statements in good faith.

For the reasons stated, we cannot concur in that portion of the lower court's decision which finds that the defendant preferred the charges in bad faith.

The lower court was of the opinion that the communications in question were qualifiedly privileged. With this we agree. *Odgers on Libel and Slander* (5th ed.), p. 276, and *Newell on Slander and Libel* (3d. ed.), sec. 600, unite in the following statement: "So, too, it is the duty of all who witness any misconduct on the part of a magistrate or any public officer to bring such misconduct to the notice of those whose duty it is to inquire into and punish it; and, therefore, all petitions and memorials complaining of such misconduct, if forwarded to the proper authority, are privileged. And it is not necessary that the informant or memorialist should be in any way personally aggrieved or injured: for all persons have an interest in the pure administration of justice and the efficiency of our public offices in all departments of the State."

Mr. Newell adds: "Every communication is privileged which is made in good faith with a view to obtain redress for some injury received or to prevent or punish some public abuse. The privilege should not be abused. If such communication be made maliciously and without probable cause, the pretense under which it is made, instead of furnishing a defense, will aggravate the case of the defendant. And a party will be taken to have acted maliciously if he eagerly seized on some slight and frivolous matter, and without any inquiry into the merits, without even satisfying himself that the account of the matter that has reached him is correct, hastily concludes that a great public scandal has been brought to light which calls for the immediate intervention of the people."

In the next section (601), Mr. Newell says: "The party complaining must be careful to apply to some person who has jurisdiction to entertain the complaint, of power to redress the grievance, or some duty or interest in connection with it. Statements made to some stranger who has nothing to do with the matter can not be privileged. If a party applies to the wrong person, through some natural and honest mistake as to the respective functions of various state officials, such slight and unintentional error will not, in America, take the case out of the privilege. But if he recklessly makes statements to some one who is, as he ought to have known, altogether unconcerned with the matter, the privilege is lost."

Both of these authors cite a number of cases illustrating the text. We do not think it necessary to set forth these cases in this opinion for the reason that the present case is clearly within the rule stated. The communications were sent by mail to the authority duly authorized to inquire into the charges made, and, hence, there was no undue publication of the defamatory words. We hold, therefore, that the defendant is not guilty of the crime charged. The judgment appealed from is, therefore, reversed and the defendant acquitted, with costs de officio. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Araullo, JJ., concur.

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